IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4773 of 2006
With
CIVIL APPLICATION No. 13760 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
LALUBHA BHURUBHA ZALA & 2 - Defendant(s)

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Appearance :
MR AJAY R MEHTA for Appellant(s) : 1,
None for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under Section 173 of the Motor Vehicles Act, 1988 by the appellant-Insurance Co. is directed against the judgment and award dated 29.8.2006 of the Motor Accident Claims Tribunal, Bhuj-Kutch in MAC Petition No.257 of 2005 awarding compensation of Rs.4,36,500/- with proportionate costs and interest to the parents of Priyeshdhwajsinh, who died at the age of 20 years in a motor vehicle accident on 24.4.2005.

2. At about 8.30 in the morning of 24.4.2005, the deceased was riding his motor-cycle when the truck insured by the appellant-Insurance Co. coming from the opposite direction collided with the motor-cycle resulting into serious injuries to the deceased resulting into instantaneous death on the spot. The parents of the deceased filed the claim petition under Section 163A of the Act for compensation of Rs.8,23,500/-.

3. The appellant i.e. the Insurance Co. of the truck filed written statement contending that the driver of the truck was not negligent and that the opponents were not liable to pay any compensation to the claimants. However, in view of the provisions of Section 163A of the Act, the Tribunal held that the liability under the said provision being no fault

liability, the question of raising or deciding the issue of negligence did not arise.

On the question of quantum of compensation, the Tribunal assessed the income of the deceased at Rs.3000/-p.m. because the deceased was running a grocery store as evidenced by certificate Exh.33 issued by the Sarpanch of the village. The Tribunal also referred to the documentary evidence in support of the claimants' case that the family had agricultural lands and the deceased was looking after the said lands. As the deceased was aged 20 years, the Tribunal considered the relevant entry in the Second Schedule to the Act and held that the total earnings on that basis would be Rs.6,40,000/-. Deducting one-third amount therefrom as the personal expenses of the deceased, the Tribunal computed compensation for loss of dependency benefit at Rs.4,32,000/-. Adding thereto Rs.2000/- as funeral expenses and Rs.2500/- for loss to the estate, the Tribunal has made award for total compensation of Rs.4,36,500/-.

4. Mr Ajay Mehta with Mr Sunil Parikh for the appellant-Insurance Co. of the truck has submitted that the Tribunal erred in not raising and considering the issue of negligence and that the Tribunal ought to have held that the deceased was guilty of contributory negligence. As regards the quantum of compensation, it is submitted that in

absence of documentary evidence, the Tribunal erred in assessing the income of the deceased at Rs.3000/- p.m. As regards the multiplier, it is submitted that since the deceased was an unmarried boy, the Tribunal should have considered the age of the parents (45 and 40 years) and, therefore, the multiplier of 18 years is very much on the higher side.

5. The learned advocate for the Insurance Company submitted that in absence of a provision in Section 163A similar to the provisions of sub-section (4) of Section 140 of the Act, the legislative intent is clear that the heirs of a deceased driver of the vehicle involved in the accident cannot claim compensation under Section 163A of the Act. It is also submitted that the expression “victim” in Section 163A also indicates that the heirs of a deceased driver cannot be considered as victim.

6. Since the provisions of Section 163A were inserted by Act 54 of 1994 w.e.f. 14.11.1994 with the specific object of providing for no fault liability, the Tribunal rightly did not raise or consider the issue of negligence. Sub-section (1) of Section 163A provides for liability of the owner of the vehicle/ authorised insurer to pay compensation in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle. Sub-section (2) thereof reads as under:-

> "(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person."

In view of the above statutory provision, the claim for compensation cannot be defeated on the ground that the deceased himself or any other person had contributed to the accident.

7. We have examined identical submissions made by another Insurance Company in our judgment rendered today in First Appeal No.4104 of 2006 and for the reasons recorded therein, we do not accept the submissions coming from the learned advocate for the Insurance Company on the question of alleged negligence.

8. As regards the assessment of income, the Tribunal has accepted the claimant's case that the deceased was running a grocery store as evidenced by the certificate issued by the Sarpanch at Exh.33. The fact also remains that the deceased was driving his own bullet motor-cycle and therefore also the assessment of income by the Tribunal at Rs.3,000/- p.m. cannot be said to be unreasonable.

9. As regards the multiplier, the learned

counsel for the appellant-Insurance Co. has vehemently submitted that since the deceased was a unmarried young man, and father and mother of the deceased were aged 45 and 40 years respectively on the date of the accident, the multiplier could not have been 18. As per the Second Schedule to the Motor Vehicles Act, 1988, when the victim was above 15 years of age but not exceeding 20 years and was earning Rs.36,000/-p.a., the amount of compensation would be Rs.6,84,000/- to be reduced by one-third towards personal expenses of the deceased. If the deceased was above 20 years but not exceeding 25 years of age, the amount of compensation would be Rs.6,48,000/- reduced by one-third towards personal expenses of the deceased.

In view of the above statutory structured formula contained in the Second Schedule, no discretion is left with the Tribunal in adopting any particular multiplier and, therefore, we are of the view that computation of compensation made by the Tribunal is in conformity with the statutory provisions contained in the Second Schedule to the Act.

10. As regards the rate of interest, the learned counsel has submitted that 10% per annum is very much on the higher side and that interest should have been awarded at the rate of 7.5%p.a..

11. Section 171 of the Act confers discretion on

the Tribunal to award interest at appropriate rate with effect from the date not prior to the date of filing the claim petition. In the recent decision dated 20.11.2006 in First Appeal No.2590 of 2006 with cognate matters, we have considered various decisions of the Apex Court awarding interest at a particular rate or confirming interest awarded by the High Court or the Tribunal. Considering the principles discussed in that judgment, we do not find that the Tribunal has erred in exercising its discretion in the facts and circumstances of the case. Besides, the claim petition was filed in the year 2005, the award is made on 29.8.2006. Therefore also any variation in the rate of interest would not have any significant impact on the amount to be paid by the Insurance Company.

12. Since we do not find any merit in any of the contentions, the appeal is summarily dismissed.

The amount deposited before this Court at the time of filing the appeal shall be transmitted to the Tribunal within one month from today.

13. Since the appeal is dismissed, the civil application for stay is also dismissed.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

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